



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1996

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-0951

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40748.

On February 21, 1996, the Texas Department of Health (the "department") received a request for information relating the department's selection of certain health maintenance organizations and specifically relating to historically underutilized businesses. On March 22, 1996, the department asked this office for a decision on whether the department may withhold from required public disclosure the requested information pursuant to section 552.104 of the Government Code.

Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* (Emphasis added).

Since the department received the request on February 22, 1996, and requested a decision from this office on March 22, 1996, the department failed to meet the ten-day period mandated by section 552.301(a). Because the department did not request an attorney general decision within the time provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.301; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

To overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. A compelling reason that overcomes this presumption of openness will generally only be found when the information falls within an exception to disclosure that is designed to protect the interests of a third party. *See* Open Records Decision No. 552. (1990).

The department asserts that the requested information is excepted from disclosure under section 552.104 of the Government Code. Because section 552.104 does not make information "confidential" and protects a governmental body's interest, the exception to disclosure may be waived by a governmental body. Open Records Decision No. 592 (1991) at 8. Therefore, this exception does not constitute a compelling reason to withhold information and the department may not withhold the requested information under this exception.

Because the requested information includes information submitted to the department by companies with an arguable proprietary interest in the information, this office notified these companies of the request and solicited arguments regarding whether the information requested is confidential. *See* Gov't Code § 552.305. This office informed the companies that if they failed to respond, this office would assume they had no proprietary interests in the information at issue. None of the companies that were notified responded to this office. Consequently, there is no basis for withholding the requested information and the department must release it.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "RWS" followed by a stylized flourish.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 40748

Enclosures: Submitted documents

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